

REMARKS

Claims 1 and 2 have been amended to incorporate the limitations of claim 4 and 35, respectively, which have been canceled to avoid redundancy. Numerous claims were amended for improved clarity. None of the amendments made herein constitutes the addition of new matter.

Request for Acceptance of Replacement Drawings

The Examiner has objected to the drawings as related to motor, power supply and centrifugal impeller blower and fan (as related to claims 4, 5-6 and 26, and 27 and 9), and has required that these features be shown in the drawings or removed from the claims.

In the interest of advancing prosecution and without acquiescing to the objection, Applicant submits Replacement Drawings herewith. Fig. 1 has been revised to show the fan, motor and power supply in accordance with the Examiner's objection. Note that the centrifugal impeller blower is believed to be one embodiment of the pressurizing means (e.g., fan). It is believed that the revised drawings do not comprise new matter in that there is verbal support in claims 4-6 and 26-27 and in the Specification at page 4, 4th and 5th paragraphs. Note that centrifugal impeller blower and fan are terms used in relation to pressuring means and/or providing gasses to the mask, and ultimately to the mask for delivery to the patient.

Annotated Drawings, which show the additions as marked with a bracket and the handwritten words "added in replacement drawings" are submitted herewith.

Approval and entry of the Replacement Drawings submitted herewith is respectfully requested.

The Requirement for Election/Restriction

The Patent Office has made final the requirement for election. The four species are set out in Figures 1-4. Once the elected species (Group IV) is found allowable, extension of examination to the remaining species is respectfully requested.

The Rejections under 35 U.S.C. 112, first paragraph

Claims 1-38 have been rejected as allegedly failing to comply with the enablement rejection. Applicant respectfully traverses this rejection.

The Patent Office has said the claims require the respiratory device to be arranged to conduct breathable gas to the trachea of the patient via a tracheotomy or via a tube through the mouth to the trachea and also requires the characterization of a pressure means so located as to impart pressure to gasses immediately adjacent to the site of the tracheotomy. The Specification is alleged to enable one of ordinary skill in the art to arrange the respiratory device with respect to the trachea or tracheotomy and it is further said that the disclosure as related to Figs.1 and 4 does not mention structure with respect to the tracheotomy or trachea.

Applicant respectfully maintains that one of ordinary skill in the art (familiar with tracheotomies and accessing a patient trachea via tracheotomy or supplying air to an intact, not tracheotomized, patient) would know, with reviewing the present Specification with its drawings, and taking into account the readily accessible knowledge in the art, could make and use a respiratory device as claimed in the present application. That said, Applicant notes that it is intended that the unit be connected in the same way as a tube from a ventilator would be connected to either the tracheotomy or (an) intubation tube, but connects directly at the inlet of this with little or no tube. Case law consistently holds that a patent need not contain (and preferably omits) what is well known in the relevant art.

In view of the foregoing, Applicant respectfully maintains that the Specification adequately supports the claimed invention, and the rejection must be withdrawn.

The Rejection under 35 U.S.C. 102

Claims 1, 2, 10, 11, 16-25, 27 and 29-31 have been rejected as allegedly unpatentable over Beasley (US 3,362,404). Applicant respectfully traverses this rejection.

In the interest of advancing prosecution and without acquiescing to the rejection, Applicant has amended claim 1 to incorporate the limitation of claim 4 ("motor co-located with the valve"). This feature is not shown in the cited Beasley reference.

In view of the foregoing, Applicant respectfully maintains that the present claimed invention is not anticipated by the cited art, and the rejection must be withdrawn.

Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This Response is accompanied by Replacement Drawings, Annotated Drawings, a Petition for Extension of Time (three months) and payment of the fee of \$555.00 pursuant to 37 C.F.R. 1.17(a) via the EFS WEB system. It is believed that this Amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If this is incorrect, please deduct any additional fees due under the foregoing Rules from Deposit Account No. 07-1969.

Respectfully submitted,

/donnamferber/

Donna M. Ferber
Reg. No. 33,878

GREENLEE SULLIVAN P.C.
4875 Pearl East Circle, Suite 200
Boulder, CO 80301
Telephone: (303) 499-8080
Facsimile: (303) 499-8089
E-mail: usptomail@greenwin.com
Attorney Docket No. 23-06